

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPREME JUDICIAL COURT

No. DAR-

APPEALS COURT

No. 2016-P-1019

COMMONWEALTH

v.

MARK PERKINS

DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW
OF THE COMMONWEALTH'S INTERLOCUTORY APPEAL FROM
AN ORDER OF THE SUFFOLK SUPERIOR COURT

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November 30, 2016

REQUEST FOR DIRECT APPELLATE REVIEW

At 6:03 in the morning on May 1, 2014, police forced entry into a residence located at 1399 Commonwealth Ave., Apt # 15, in Allston to execute a search warrant. The warrant, issued a day earlier, authorized the police to search the residence for records, money, paraphernalia and cell phones, relating to or evidencing an alleged scheme to distribute cocaine but, notably, not for cocaine or any other controlled substances.

Implausibly, the police affidavit underlying the search warrant did not describe a single drug transaction (or any other illegality) being observed, suspected, or reported to have occurred at or near 1399 Commonwealth Avenue. Nor did it allege that any target of the ongoing investigation was ever observed travelling to or from 1399 Commonwealth Avenue either before or after any alleged drug transaction.

Unsurprisingly, the Superior Court (Frison, J.) later issued an Order suppressing the fruits of the search of 1399 Commonwealth Avenue, based on the affidavit's failure to establish a sufficient nexus between the alleged drug conspiracy and the residence. On interlocutory appeal, the Commonwealth claims that

the motion judge erred in concluding the absence of such linking facts or observations undermined probable cause. According to the Commonwealth, in cases where police seek authorization to search a residence only for records and other evidence *related* to the distribution of controlled substances--but not for controlled substances themselves--the constitutionally required "nexus" between a suspect's alleged criminal acts and his residence may rest entirely on an officer's averment that persons involved in the type of crime under investigation "typically" generate records and "often" conceal such records "in their residences, in their cars, in safe deposit boxes, and/or another secure location ..."

The Commonwealth's argument is a radical departure from this Court's nexus jurisprudence; it raises important issues of state and federal constitutional law that appropriately should be decided by this Court. The defendant therefore requests, pursuant to Mass. R. App. P. 11, that this Court grant direct appellate review of the Commonwealth's appeal in this matter, repudiate its' arguments, and affirm the motion judge's Order.

STATEMENT OF PRIOR PROCEEDINGS

On August 13, 2014, a Suffolk County grand jury returned indictments charging Defendant-Appellee Mark Perkins with several possessory offenses including trafficking in 200 grams or more of cocaine in violation of G.L. c. 94C § 32E(b) (Count I), possessing ammunition in violation of G.L. c. 269 § 10(h) and § 10G(c) (Count II), and possessing an electric stun gun in violation of G.L. c. 141 § 31J (Count III) [R.A.:1-6].¹ The charges arose out of the execution of a warrant to search the residence at 1399 Commonwealth Ave., Apt # 15, in Allston on May 1, 2014.

On January 21, 2015, Defendant, through counsel, filed a motion to suppress all evidence seized during the execution of that search warrant. On March 9, 2015, a non-evidentiary hearing was held before Frison, J. of the Suffolk Superior Court. On March 23, 2015, the Court allowed Defendant's motion on the grounds that the affidavit supporting the application for a search warrant did not establish a sufficient

¹ The Record Appendix filed by the Commonwealth is cited herein as "R.A.:Page#". The contents of the Addendum to this Application are cited as "ADD:Page#".

nexus between the alleged drug conspiracy being investigated and 1399 Commonwealth Avenue to justify intrusion into the home. [R.A.:596-599].

On April 10, 2015, the Commonwealth filed a motion seeking reconsideration of the court's suppression order as well as clarification of the court's findings and rulings, and an evidentiary hearing "on the issue of abandonment." [R.A.:601]. On August 19, 2015, an evidentiary hearing was conducted at the Middlesex Superior Court. Thereafter, the court issued written findings and rulings denying reconsideration of its earlier ruling regarding the validity of the search warrant and rejecting the Commonwealth's alternate argument based on abandonment.² [R.A.:613-619].

The Commonwealth noticed its appeal of the Superior Court's Order on September 17, 2015; four days later it sought leave of a single justice of the Supreme Judicial Court to pursue an interlocutory appeal. [R.A.:621-644]. The Commonwealth's application for interlocutory appeal was allowed on November 17,

² The Commonwealth has not pursued its alternate "abandonment" argument on appeal. It did not request production the August 19, 2015 evidentiary hearing on that issue and does not argue it in its opening brief.

2015, [R.A.:645-646] and the case was entered on the docket of the Appeals Court on July 26, 2016.

STATEMENT OF THE FACTS

On April 30, 2015, Massachusetts State Police Trooper Patrick M. Burke ("Burke") and Detective Robert J. Lewis ("Lewis") applied for warrants to search twelve residences across Middlesex, Suffolk, and Worcester Counties in Massachusetts.³ Among the residences to be searched was 1399 Commonwealth Avenue, Apartment #15, in Allston, described in the affidavit as the "Mark Perkins Residence." [R.A.:16].

In support of the applications, Burke and Lewis submitted a lengthy master affidavit describing a wiretap investigation into a suspected narcotics enterprise operated by Robert "Black" Hairston ("Hairston"), his family members, and other suspected associates ("the Hairston Organization").

The affidavit spans 221 pages and 306 paragraphs. It consists primarily of transcribed telephone conversations from wiretaps of cellphones associated with Hairston and two associates, Cheniel "Biggie"

³ The application also sought permission to seize and/or search seven automobiles, a cellular telephone, and "10,000 in United States Currency", none of which is at issue in the present case.

Garcia and Stephanie Reesor. It describes attempts by Hairston to obtain various amounts of cocaine from an individual identified as Nasean Johnson ("Johnson") on four discrete occasions: April 18, 2014, April 19, 2014, April 23, 2014, and April 26, 2014.⁴

As the Commonwealth is forced to concede in its opening brief, Gov't Br. at 32, Defendant is not a party to any of the intercepted conversations described in the search warrant affidavit. Nor do the voluminous transcripts of those conversations contain even a single reference to Defendant's name, telephone number, or the residence at 1399 Commonwealth Avenue. Moreover, the affidavit does not describe even one drug transaction being observed, suspected, or reported to have occurred at 1399 Commonwealth Avenue. Nor does it allege that Defendant or any target of the investigation was ever observed travelling to or from 1399 Commonwealth Avenue either before or after the alleged drug transactions on April 18, 2014, April 19, 2014, April 23, 2014, or April 26, 2014.

Indeed, the only information set out in the 221-

⁴ The affidavit also details discussion among Hairston's family members of efforts to fund these purchases and suspected plans for repackaging and further distribution of the contraband.

page search warrant affidavit regarding 1399 Commonwealth Avenue is a description of efforts by police to confirm that it was the residence of the Defendant, whom police had come to suspect was involved in the Hairston drug trafficking conspiracy. [R.A.153-154,155,195,229]. The information describing Defendant's alleged involvement in the Hairston drug trafficking conspiracy, in turn, consists of his presence before and after a single transaction between Johnson and Hairston on April 23, 2014-some seven days prior to the request for a warrant. [R.A.:134-161].

The April 23, 2014 Transaction.

The affidavit alleges that at approximately 11:00 a.m. on April 23, 2014, police intercepted a call from Hairston to Johnson in which Hairston agreed to purchase 125 grams of cocaine. (RA 139-141, 143). During the phone call, Johnson referenced a person he called "Ol'Boy" who, according to Johnson, had set a price of \$5,200 for the transaction. The affidavit alleges that at approximately 12:08 p.m., police intercepted a second call from Hairston to Johnson. [R.A.:143] For reasons unexplained (and unlike the 11:00 a.m. call) no transcript of this call is provided in the affidavit, only a police-prepared

summary. [R.A.:143]. According to that summary, Hairston and Johnson agreed to "meet at 2:00 p.m. in Natick at a mall, with the source coming from Brighton." Id.

Police set up surveillance in the vicinity of the Natick Mall. At approximately 2:35 p.m., police observed an unknown black male, wearing an orange hooded sweatshirt and jeans, exit the parking lot of the Natick Mall near Macy's and enter "Boloco Burrito" across the street. [R.A.:154]. According to the affidavit, police would later identify the black male during a warrantless motor vehicle stop as the Defendant, Mark Perkins, of 1399 Commonwealth Avenue in Allston. Id. Police were also able to ascertain the Perkins had a criminal record, including three adult convictions for controlled substances violations. [R.A.:154-155].

As Perkins crossed the lot, police "heard a car horn honk from a grey 2013 Chevy Malibu, bearing Massachusetts registration 279 WV5, ["the Chevy Malibu"] which was parked toward the back corner of the lot." [R.A.:154]. A Registry of Motor Vehicles inquiry would later reveal that the Chevy Malibu was a rental leased to Leah Spence, also of 1399

Commonwealth Avenue in Allston. [R.A.:155].

A few minutes later, police observed Perkins exit "Boloco Burrito" and walk across the street toward Macy's while apparently talking on a cell phone. At approximately 2:40 p.m., Perkins was observed in front of Macy's. Moments later, the Chevy Malibu entered the lot and stopped in the travel lane. Perkins was observed holding an unidentified object in his hand as he approached the Chevy Malibu and briefly spoke with its female operator. He then walked away and discarded the item he was holding in a trash barrel located on the sidewalk. [R.A.:159]. The affidavit does not indicate that police attempted to recover the item. Nor does it describe Perkins interacting with any other person in the vicinity of the Natick Mall.

Meanwhile, at approximately 2:37 p.m., police intercepted a phone call from Johnson to Hairston in which Hairston indicated he was "pulling inside the mall right now" and the two discussed where they would meet, ultimately agreeing to meet at the side of the Macy's parking lot facing Ben and Jerry's. [R.A.:156-158]. During the conversation, Hairston states: "Oh I see you, that's you in the hoodie? Nah, that's not you in the hoodie. Hell no" [R.A.:158] and Johnson says

"Yeah, yeah, keep going that my peeps. Yeah, yeah, yeah." Id. Two minutes later, at approximately 2:39 p.m., police intercepted a phone call from Hairston to Johnson in which Johnson informs Hairston "[y]ou just passed me" and instructs Hairston to "just back up" [R.A.:158-159].

At approximately 2:40 p.m.--the same time the affidavit alleges Perkins was being observed interacting with Leah Spence in front of Macy's-- police observed Hairston in the parking lot entering a yellow 2013 Nissan Altima parked across from the Macy's entrance. [R.A.:159]. According to Registry of Motor Vehicles records, the yellow Altima was registered to a Jennie Jensen of 302 Grove Street in Randolph. Id. Two minutes later, police observed Hairston exit the yellow Altima and walk a short distance to an Audi sedan. Id. Police then observed Johnson exiting the yellow Altima and going over to the Audi. [R.A.:159-160]. After a brief conversation with Hairston, Johnson re-entered the yellow Altima and left the Macy's lot. [R.A.:159]. Again, the affidavit does not describe the defendant interacting with Hairston, Johnson or any person other than Spence in the vicinity of the Natick Mall.

The affidavit states that “[s]urveillance officers followed the yellow Altima out of the Natick Mall and out to Route 9 eastbound.” [R.A.:161]. Some twenty minutes later, at approximately 3:02 p.m., Massachusetts State Police Sergeant ordered a warrantless stop of the yellow Altima in the city of Newton. Id. The affidavit does not describe the duration, the purported justification, or the substantive scope of the stop. It merely states that “[a]s a result of the stop, police were able to identify the driver of the yellow Altima as [the defendant] Mark Perkins and the passenger as Nasean Johnson.” Id. It further states that police observed “a bundle of United States currency” in the glove compartment “which was determined to be \$5,200.” Id.

The affidavit asserts that, at approximately 3:10 p.m., police intercepted a call from Hairston to Johnson in which Hairston states: “That shit’s wet, dog” which the affiants interpreted as referring to the wet texture of recently prepared crack cocaine. [R.A.:163]. Johnson indicated to Hairston that he would call Hairston back “because I just got pulled over.” [R.A.:163]. Fifteen minutes later, at approximately 3:24 a.m., police intercepted a call

from Johnson to Hairston in which Johnson states "Yeah, he said let it sit for an hour, man. Should be straight, but on the next one he got you." [R.A.:164].

The Affiants' Training and Experience.

In addition to transcribed telephone conversations and observations of police, the search warrant application contained an Appendix titled "STRUCTURE OF DRUG ORGANIZATIONS" in which the affiants generally opine "based on [their] training and experience" that, among other things:

"Distributors of drugs often maintain books, records, receipts, invoices, notes, ledgers, money orders, bank records and other papers relating to the transportation, ordering, sale and distribution of controlled substances;"

and

Persons involved in the distribution of drugs often conceal their distribution records, controlled substances and money either in their residences, in their cars, in safe deposit boxes, and/or another secure location..."

[R.A.:375].

The Warrant and its Execution.

Based on the affidavit, a justice of the Superior Court issued a warrant to search 1399 Commonwealth Ave., Apt # 15, in Allston, Massachusetts on April 30, 2014. [R.A.:13]. As noted, the warrant application did

not request, and the warrant did not provide, authorization to search for cocaine or any other controlled substances. [R.A.:14]. Rather, it identified only records, money, paraphernalia and cell phones, relating to or evidencing a scheme to distribute cocaine. Id. It also identified an "[o]range hooded sweatshirt, as observed April 23, 2014 in Natick." Id.

Police executed the warrant by forced entry at 6:05 a.m. on May 1, 2014. [R.A.:567]. During the search, police encountered Perkins and Spence and seized a number of items including one round of ammunition, a "stun gun", a checkbook, other "[m]iscellaneous paperwork" and a kilo of cocaine. [R.A.:567, xxx]. No orange sweatshirt was recovered.

The Trial Court's Ruling

On March 23, 2015, the Superior Court issued an Order suppressing all evidence seized during execution of the warrant to search 1399 Commonwealth Ave.. [R.A.:596-599]. It did so on the ground that the affidavit offered in support of that warrant did not establish a sufficient nexus between the alleged drug conspiracy being investigated and 1399 Commonwealth Avenue to justify intrusion into the home.

Argument

I. Legal Standards

Under both the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights, a search warrant may issue only upon a showing of probable cause. See Commonwealth v. Valerio, 449 Mass. 562, 566 (2007). To establish probable cause to obtain a search warrant, the information in the affidavit must provide a substantial basis to conclude (1) that a crime had been committed and (2) that the items described in the warrant were related to the criminal activity and probably in the place to be searched. Commonwealth v. O'Day, 440 Mass. 296, 298 (2003).

In evaluating probable cause, "it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people." Commonwealth v. Escalera, 462 Mass. 636, 643 (2012), quoting Minnesota v. Carter, 525 U.S. 83, 99 (1998) (Kennedy, J., concurring). Accord Florida v. Jardines, 133 S. Ct. 1409, 1414 (2013) (describing the home as "first among equals" when it comes to the protections of the Fourth Amendment). In accordance with these special protections, probable cause to

search a suspect's residence cannot be established on information that he may have committed a crime. See Commonwealth v. Pina, 453 Mass. 438, 441 (2009) ("probable cause to expect that drugs will be present in a home is not established by the fact that the defendant lives there."). Accord Commonwealth v. Matias, 440 Mass. 787, 794 (2004) (citing Commonwealth v. Jean-Charles, 398 Mass. 752, 757 (1986)). Rather, a search warrant affidavit must supply particularized information demonstrating a sufficient and timely "nexus" between the alleged criminal activity and the particular residence.

To satisfy the "nexus" requirement an affidavit must offer a "'substantial basis' for concluding that evidence connected to the crime will be found on the specified premises.'" Commonwealth v. Tapia, 463 Mass. 721, 726 (2012) (quoting Commonwealth v. Donahue, 430 Mass. 710, 712 (2000)). While police "need not make a showing beyond a reasonable doubt, '[s]trong reason to suspect is not adequate.'" Commonwealth v. Kaupp, 453 Mass. 102, 111 (2009), quoting Commonwealth v. Upton, 394 Mass. 363, 370 (1985).

II. The Motion Judge Correctly Concluded that the Police Lacked Probable Cause to Search the Residence at 1399 Commonwealth Avenue Because the Search Warrant Affidavit Does not Contain a Scintilla of Particularized Information Connecting that Residence to the Criminal Activity under Investigation.

Although “[n]o bright-line rule can establish whether there is a nexus between suspected drug dealing and a defendant’s home,” Commonwealth v. Escalera, 462 Mass. 636, 643 (2012), the absence of even a *single* observation, allegation, or report of drug transaction involving 1399 Commonwealth Avenue makes this case irreconcilable with the mine-run of cases where a sufficient nexus has been found and belies that finding here. See, e.g., Commonwealth v. Cruz, 430 Mass. 838, 841-842 (2000) (undercover officer purchased cocaine from defendant in parking lot of defendant’s apartment building during six separate controlled sales); Commonwealth v. Monteiro, 80 Mass. App. Ct. 171, 175 (2011) (multiple controlled purchases after defendant observed leaving his home); Commonwealth v. Hardy, 63 Mass. App. Ct. 210, 211-212, (2005) (defendant left from apartment for two controlled purchases); Commonwealth v. Tapia, 463 Mass. 721, 721 (2012) (police observation of defendant leaving her home to go to the location of a controlled

purchase sufficient when coupled with the police observations of three drug purchases and informant's tip); Escalera, supra at 644 (single observation of a suspect departing from his home for a drug deal may be sufficient when "coupled with other information, such as statements from credible informants.").

As the Commonwealth is forced to concede in its opening brief, Gov't Br. at xx, the voluminous transcripts of intercepted conversations which form the bulk of the search warrant affidavit do not contain a single reference to Defendant's name, telephone number, or the residence at 1399 Commonwealth Avenue in Allston. Nor does the affidavit describe even a single drug transaction being observed, suspected, or reported to have occurred at 1399 Commonwealth Avenue in Allston, either through police surveillance or statements from credible informants. Nowhere does it allege that Defendant or any target of the investigation was observed travelling to or from 1399 Commonwealth Avenue in Allston either before or after the alleged drug transactions on April 18, 2014, April 19, 2014, April 23, 2014, or April 26, 2014. In these circumstances, the motion judge did not err in allowing the motion to

suppress. See Commonwealth v. Kaufman, 381 Mass. 301, 304 (1980) ("Notably absent is reliable specific information from any quarter placing illegal drugs or drug transactions there in the past").

III. This Court Should Forcefully Reject the Commonwealth's Claim that, Insofar as Police Are Seeking Authorization to Search a Residence for Records Related to the Distribution of Controlled Substances--but not for Controlled Substances--the "Nexus" Between a Suspect's Alleged Criminal Acts and his Residence May Rest Entirely on an Officer's Boilerplate Averment that Persons Involved in the Type of Crime under Investigation "Often" Generate Such Records and "Often" Conceal them "Either in Their Residences ... and/or Another Secure Location..."

Faced with the affidavit's singular failure to connect 1399 Commonwealth Avenue to any criminal activity whatsoever, the Commonwealth spends eleven pages of its appellate brief attempting to concoct the missing nexus through a long series of increasingly speculative inferences. Beginning with Johnson's statement to Hairston "Yeah, he said let it sit for an hour, man. Should be straight, but on the next one he got you"--made close in time to when defendant and Johnson were stopped by police [R.A.:164]--the Commonwealth urges a number of inferences: (1) that Johnson is relating advice to Hairston regarding cocaine; (2) that the source of that advice is the defendant and not some other third party; and

therefore (3) the defendant is not only Johnson's supplier but his "superior" within a far reaching criminal organization. Gov't Br. at 9, 17, 26. From these first- and second- level inferences, the Commonwealth asks this court to infer further: (4) that defendant (although never observed or referenced during any transaction other than alleged to have occurred on April 23, 2014) was a party to not only every transaction detailed during the wire tap investigation, but also to an unlimited number of other transactions occurring on a regular basis, making him "a regular supplier to a large-scale narcotics operation". Gov't Br. at 27-28. As such, the Commonwealth posits (5) it can be inferred that defendant has "received large cash payments from Hairston and presumably other customers for his product"; and therefore (6) "it can also be inferred that business records would be generated." Id. at 28. Finally, the Commonwealth argues (7) that "it is reasonable to infer that the defendant would store such items in a safe place such as his residence where he could also easily access the items when needed, especially where no other residence or location was identified or tied to him in the affidavit." Id. at 30

Assuming for the sake of argument that this parade of inferences are sufficient to establish probable cause of Perkins' involvement in the ongoing conspiracy (and, much more tenuously, his role as a supplier), it falls well short of the type of particularized factual information necessary to reasonably conclude that the drug business under investigation included defendant's residence.

In lieu of particularized factual information, the Commonwealth offers two considerations: (1) the affiants' boilerplate opinion that "persons involved in the distribution of drugs often conceal their distribution records, controlled substances and money either on their person, in their residences, in their cars, in safe deposit boxes, and/or another secure location ..." [R.A.:374-375] and (2) the blithe supposition that: "If he did not maintain his accounts and records, and presumably large sums of money received in the course of his dealings, at his apartment, where else would he keep them?" Gov't Br. at 35 (quoting United States v. Feliz 182 F.3d 82, 88 (1st Cir. 1999)). This reliance is misplaced.

As this Court cautioned recently in Commonwealth v. White, 475 Mass. 591 (2016): "While probable cause

may be based in part on police expertise or on 'the practical considerations of everyday life,' ... such considerations do 'not, alone, furnish the requisite nexus between the criminal activity and the places to be searched' or seized." Commonwealth v. White, 475 Mass. 583, 591 (2016) (quoting Commonwealth v. Kaupp, 453 Mass. 102, 111 (2009) and Commonwealth v. Anthony, 451 Mass. 59, 72 (2008)). In White, the Court rejected nearly identical efforts by the Commonwealth to rely on general considerations to establish probable cause to search a cellular telephone. Id. The Court explained:

In essence, the Commonwealth is suggesting that there exists a nexus between a suspect's criminal acts and his or her cellular telephone whenever there is probable cause that the suspect was involved in an offense, accompanied by an officer's averment that, given the type of crime under investigation, the device likely would contain evidence. If this were sufficient, however, it would be a rare case where probable cause to charge someone with a crime would not open the person's cellular telephone to seizure and subsequent search. We cannot accept such a result, which is inconsistent with our admonition that "individuals have significant privacy interests at stake in their [cellular telephones] and that the probable cause requirement ... under both the Fourth Amendment ... and art. 14 ... [must] serve[] to protect these interests."

Id. (citations omitted). Here, the Commonwealth's

argument is founded on the suggestion that there exists a nexus between a suspect's alleged criminal acts and his residence whenever there is probable cause that the suspect was involved in the distribution of controlled substances, and there is a police averment that persons involved in the type of crime under investigation "often" generate records and "often" conceal such records "in their residences, in their cars, in safe deposit boxes, and/or another secure location ...". As in White, this is an unacceptable result that makes a mockery of this Court's repeated admonitions that the nexus requirement--an outgrowth of the special constitutional protection afforded to a person's home --is not satisfied "based solely on the fact 'that the defendant lives there.'" Escalera, 462 Mass. at 643 (quoting Pina, 453 Mass. at 441). This radical suggestion requires and deserves specific repudiation by this Court.

The Commonwealth claims that its strained nexus analysis is supported by two decisions of the Appeals Court, Commonwealth v. Santiago, 66 Mass. App. Ct. 515 (2006) and Commonwealth v. Lima, 80 Mass. App. Ct. 114 (2011). Those cases each note that "[o]nce it was

established that the defendant was operating a drug business that included [his residence] little, if anything more, needed to be added in the affidavit to justify searching for 'records, ledgers, or proceeds.'" Evidently heartened by this language, the Commonwealth goes to great lengths to shoehorn this case into the circumstantial profiles described in Santiago and Lima. It makes no effort, however, to satisfy or even meaningfully acknowledge Santiago's express threshold requirement that information in the affidavit "establish[] that the defendant was operating a drug business that included [his residence]". Compare Santiago, 66 Mass. App. Ct. at 522, n. 15 (2006) (recapping the direct evidence, including observed transactions, "leading the police reasonably to conclude that [Santiago's residence] was involved in the drug operation").

In any event, to the extent that Santiago or Lima are inconsistent with this Court's nexus jurisprudence--including its admonition in White that generalized considerations, without more, do cannot furnish the requisite nexus between the criminal activity and the places to be searched--they must be overruled.

STATEMENT OF REASONS WHY
DIRECT APPELLATE REVIEW IS APPROPRIATE

This appeal by the Commonwealth raises important issues of state and federal constitutional law that appropriately should be decided by this Court. The proposition that a nexus between a drug distribution suspect's alleged criminal acts and his residence may be "inferred" whenever the police aver that persons involved in such acts "often" generate records and "often" conceal such records in their residences, is a radical departure from this Court's nexus jurisprudence. It directly contradicts this Court's recent admonition in White that generalized considerations, without more, cannot furnish the requisite nexus between the criminal activity and the places to be searched.

Evidently unsatisfied by this Court's clear nexus precedents, the Commonwealth advocates an end-run around them, invoking outlier decisions of the Appeals Court. These efforts require and deserve specific repudiation by this Court, which is in the best position to resolve the issue conclusively.

CONCLUSION

For the foregoing reasons, direct appellate review should be allowed.

Respectfully Submitted,
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APPELLEE-DEFENDANT

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing motion has been served upon Special Assistant District Attorney Nicole Nixon, Office of the Middlesex District Attorney, 15 Commonwealth Avenue, Woburn, MA 01801, by first class mail, postage prepaid, this 30th day of November, 2016.

/s/ John M. Thompson
John M. Thompson

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLKS, ss.

Suffolk Superior Court
No.: 2014-10703

COMMONWEALTH OF MASSACHUSETTS

vs.

MARK PERKINS

Findings and Rulings on Defendant's Motion To Suppress Evidence

The defendant has been indicted for Trafficking in Cocaine. His Motion to Suppress Evidence was heard at the Suffolk Superior Court. The motion is ALLOWED.

This motion was argued on the four corners of the search warrant at issue. The defendant moves the Court to suppress any and all items seized pursuant to search warrant issued from the Superior Court on April 30, 2014 and executed by the Massachusetts State Police and Boston Police on the same date.

On April 30, 2014, Massachusetts State Trooper Patrick M. Burke and Framingham Police Detective Robert J. Lewis applied to the Superior Court for, and were granted, a warrant to search 1399 Commonwealth Avenue, Apartment #15, Allston, Massachusetts. The affidavit filed in support of the search warrant alleged that as a result of numerous wiretap warrants, Trooper Burke and Detective Lewis had confirmed that Robert "Black" Hairston, Cheniel "Biggie" Garcia, Stephanie Reesor, and other associates used cellular telephones to facilitate their narcotics distribution business. These wiretaps were issued by a Justice of the Superior Court from April 4, 2014 through April 18, 2014.

Attachment A

Trooper Burke's and Detective Lewis' affidavit states that "[b]ased on your affiants' training and experience and the facts and circumstances learned during the course of this investigation, we believe we have probable cause to believe that the following will be located at 1399 Commonwealth Avenue, Apt. #15, Allston, MA."

That Commonwealth certainly demonstrated to the issuing Justice that the Framingham Police and the State Police have conducted an extensive investigation into the alleged illegal drug distribution activities of Robert Hairston, Nora Hairston, Stephanie Reesor, Calvin Hodge, Cheniel Garcia, Nasean Johnson, and Christine Williams. However, the information that police had about defendant Mark Perkins before seeking a warrant to search his residence was as follows:

- (1) Perkins drove the vehicle on April 23, 2014 in the alleged transaction in which Nasean Johnson sold a large quantity of cocaine to Robert Hairston for \$5,200 at the Natick Mall parking lot.
- (2) Upon being stopped by police after the transaction at the Natick Mall, Perkins opened his glove compartment and police officers observed an amount of United States currency later determined to be exactly \$5,200. Robert Hairston was his passenger in the vehicle.
- (3) Perkins has a criminal record that includes a significant history of drug charges.

Perkins is not heard or seen on any of the other dates of surveillance and wiretapping. At no time is Perkins observed leaving his home or going to his home after a drug transaction. No other conversations among the parties mention his name or a nickname or his residence. None of the other parties speak to him about any of their transactions,

meetings, or plans. The police had no information at the time the warrant was applied for that Perkins played any role in the alleged conspiracy. So, whereas they clearly determined among the other actors who is the leader, who makes physical pick ups and drop offs, who breaks down and packages the drugs – they had absolutely no information that they provided the issuing Justice as to the role or duties of Mark Perkins in the alleged drug conspiracy.

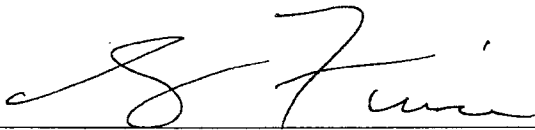
“It is established that, in drug cases such as the present, the affidavit accompanying a search warrant application must contain facts sufficient to demonstrate that there is probable cause to believe that drugs, or related evidence, will be found at the location to be searched.” *Commonwealth v. Pina*, 453 Mass. 438 (2009).

The absence of detail connecting that target residence to drug activity is insufficient for the issuance of a search warrant for the residence. *Commonwealth v. Gauthier*, 425 Mass. 37 (1997) (only information regarding defendant’s home was that a known drug dealer entered and departed the residence); *Commonwealth v. Laughlin*, 40 Mass. App. Ct. 926, 927 (1996) (no evidence in affidavit other than defendant was drug dealer who lived at residence searched). Even information establishing that a person is guilty of a crime does not necessarily constitute probable cause to search that person’s residence. *Commonwealth v. Cinelli*, 389 Mass. 197, 213 (1983). When the location to be searched is a residence, there must be specific information contained in the affidavit to provide a sufficient nexus between the defendant’s drug selling activity and his residence to establish probable cause to search the residence. *Commonwealth v. O’Day*, 440 Mass. 296 (2003).

Here, there are absolutely no facts in the affidavit establishing a nexus between the alleged drug conspiracy being investigated and 1399 Commonwealth Avenue. The Commonwealth argues that the mere existence of a large, ongoing drug conspiracy provide probable cause to search this particular defendant's home. The Court disagrees. Without establishing that Mark Perkins is part of that conspiracy *and* that drugs or documentary evidence of drug distribution is likely at his home, there is no justification for the intrusion. *See Commonwealth v. Smith*, 57 Mass. App. Ct. 907 (2003).

ORDER

For the foregoing reasons, the defendant's Motion To Suppress Evidence is ALLOWED.

A handwritten signature in black ink, appearing to read 'S. Frison', is written over a horizontal line.

Honorable Shannon Frison
Justice of the Superior Court

Dated: March 23, 2015

22

COMMONWEALTH OF MASSACHUSETTS

SUFFOLKS, ss.

Suffolk Superior Court
No.: 2014-10703

COMMONWEALTH OF MASSACHUSETTS

vs.

MARK PERKINS

Findings and Rulings on Commonwealth's Motion To Reconsider, Requesting Clarification And
For An Evidentiary Hearing And Rulings On Issue Of Abandonment

The defendant was indicted for Trafficking in Cocaine. His Motion to Suppress Evidence was heard at the Suffolk Superior Court. That motion was allowed by this Court as argued on the four corners of the search warrant. The Commonwealth has subsequently requested a hearing on the issue of abandonment, reconsideration of the ruling on the search warrant, and clarification of the Court's findings and rulings. The Commonwealth's motion is ALLOWED in part, and DENIED in part. It is allowed as to the Commonwealth's request for an evidentiary hearing. The Commonwealth's witnesses were heard on August 19, 2015 at the Middlesex Superior Court. The motion is denied as to reconsideration of the validity of the search warrant. The warrant is illegal as to the defendant's residence for the reasons stated below. And finally, after further hearing, the motion is denied as to the issue of abandonment for the following reasons.

The defendant moved the Court to suppress any and all items seized pursuant to search warrant issued from the Superior Court on April 30, 2014 and executed by the Massachusetts State Police and Boston Police on the same date.

Attachment B

On April 30, 2014, Massachusetts State Trooper Patrick M. Burke and Framingham Police Detective Robert J. Lewis applied to the Superior Court for, and were granted, a warrant to search 1399 Commonwealth Avenue, Apartment #15, Allston, Massachusetts. The affidavit filed in support of the search warrant alleged that as a result of numerous wiretap warrants, Trooper Burke and Detective Lewis had confirmed that Robert "Black" Hairston, Cheniel "Biggie" Garcia, Stephanie Reesor, and other associates used cellular telephones to facilitate their narcotics distribution business. These wiretaps were issued by a Justice of the Superior Court from April 4, 2014 through April 18, 2014.

Trooper Burke's and Detective Lewis' affidavit states that "[b]ased on your affiants' training and experience and the facts and circumstances learned during the course of this investigation, we believe we have probable cause to believe that the following will be located at 1399 Commonwealth Avenue, Apt. #15, Allston, MA." The warrant issued.

The following facts are found based upon the testimony of Massachusetts State Police Trooper Patrick Burke and Mr. Grover Martel: On May 1, 2014 Trooper Burke and approximately 15 other Boston Police and State Police officers converged upon Mr. Perkins apartment at 1399 Commonwealth Avenue in Boston, Massachusetts at 6:05 a.m. to execute the search warrant. Boston Police knocked and announced their presence. Over the course of approximately 60 seconds, police announced their right to enter and had a back and forth conversation with a female voice inside the apartment who was stating "hold on, coming!" or words to that effect. After approximately 60 seconds expired with no one opening the apartment door, Boston Police used a battering ram to knock down the door and enter the apartment. Inside were Mr. Perkins, his girlfriend Ms. Spence, and their minor child. As Trooper Burke entered

the bathroom of the apartment he noticed that the window was 4-5 inches open and that a white plastic bag was on the ground outside in the fire escape courtyard of the building. Trooper Burke went outside and had the maintenance employee open the courtyard area where he retrieved the white bag. It contained an amount of purported cocaine. The courtyard is accessible from inside the building and from each fire escape without a key. To exit the courtyard, however, a key is required. Tenants are not allowed to store personal belongings in the courtyard.

I. Search Warrant

That Commonwealth certainly demonstrated to the issuing Justice that the Framingham Police and the State Police have conducted an extensive investigation into the alleged illegal drug distribution activities of Robert Hairston, Nora Hairston, Stephanie Reesor, Calvin Hodge, Cheniel Garcia, Nasean Johnson, and Christine Williams. However, the information that police had about defendant Mark Perkins before seeking a warrant to search his residence was as follows:

- (1) Mr. Perkins drove the vehicle on April 23, 2014 in the alleged transaction in which Nasean Johnson sold a large quantity of cocaine to Robert Hairston for \$5,200 at the Natick Mall parking lot.
- (2) Upon being stopped by police after the transaction at the Natick Mall, Mr. Perkins opened his glove compartment and police officers observed an amount of United States currency later determined to be exactly \$5,200. Robert Hairston was his passenger in the vehicle.
- (3) Mr. Perkins has a criminal record that includes a significant history of drug charges.

Mr. Perkins is not heard or seen on any of the other dates of surveillance and wiretapping. At no time is Mr. Perkins observed leaving his home or going to his home after a drug transaction. No other conversations among the parties mention his name or a nickname or his residence. None of the other parties speak to him about any of their transactions, meetings, or plans. The police had no information at the time the warrant was applied for that Mr. Perkins played any role in the alleged conspiracy. So, whereas they clearly determined among the other actors who is the leader, who makes physical pick ups and drop offs, who breaks down and packages the drugs — they had absolutely no information that they provided the issuing Justice as to the role or duties of Mark Perkins in the alleged drug conspiracy.

“It is established that, in drug cases such as the present, the affidavit accompanying a search warrant application must contain facts sufficient to demonstrate that there is probable cause to believe that drugs, or related evidence, will be found at the location to be searched.” *Commonwealth v. Pina*, 453 Mass. 438 (2009).

The absence of detail connecting that target residence to drug activity is insufficient for the issuance of a search warrant for the residence. *Commonwealth v. Gauthier*, 425 Mass. 37 (1997) (only information regarding defendant’s home was that a known drug dealer entered and departed the residence); *Commonwealth v. Laughlin*, 40 Mass. App. Ct. 926, 927 (1996) (no evidence in affidavit other than defendant was drug dealer who lived at residence searched). Even information establishing that a person is guilty of a crime does not necessarily constitute probable cause to search that person’s residence. *Commonwealth v. Cinelli*, 389 Mass. 197, 213 (1983). When the location to

be searched is a residence, there must be specific information contained in the affidavit to provide a sufficient nexus between the defendant's drug selling activity and his residence to establish probable cause to search the residence. *Commonwealth v. O'Day*, 440 Mass. 296 (2003).

Here, there are absolutely no facts in the affidavit establishing a nexus between the alleged drug conspiracy being investigated and 1399 Commonwealth Avenue. The Commonwealth argues that the mere existence of a large, ongoing drug conspiracy provide probable cause to search this particular defendant's home. The Court disagrees. Without establishing that Mark Perkins is part of that conspiracy *and* that drugs or documentary evidence of drug distribution is likely at his home, there is no justification for the intrusion. *See Commonwealth v. Smith*, 57 Mass. App. Ct. 907 (2003).

II. Abandonment

Abandonment of property is an exception to the warrant requirement. Without any support in caselaw, the Commonwealth asks the Court to consider the police officers' authority to seize the contraband at issue here after the Court has ruled the search warrant invalid on its face. The Commonwealth argues that despite the illegality of the search warrant, the warrant exception of abandonment can still apply to these facts and circumstances. The Court, again, disagrees. Because the police had no authority to be in Mr. Perkins' apartment to begin with (they were not invited, the search warrant was invalid, and they busted down the door to gain entry), nothing found in that endeavor can be used against the defendant.

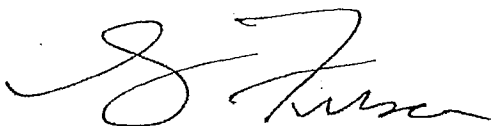
Under the Fourth Amendment to the United States Constitution, warrantless searches are "per se unreasonable." *Katz v. United States*, 389 U.S. 347, 357 (1967). When a search is conducted without a warrant, the burden is on the Commonwealth to show that the search "falls within a narrow class of permissible exceptions" to the warrant requirement. *Commonwealth v. Antobenedetto*, 366 Mass. 51, 57 (1974). If the Commonwealth cannot show that the search falls within an exception to the warrant requirement, all evidence obtained as a result of the search must be suppressed. See *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). In this case, a warrant did in fact issue, but was illegal on its face as it pertains to Mr. Perkins' residence. As such, the Court could undergo an analysis as if no warrant existed. However, here, there would have been no other authority for the police to be in the apartment.

In *Hobson v. United States*, 226 F.2d 890 (8th Cir. 1955), the Court stated in a similar set of facts: "Considering the total atmosphere of the case as directed by *United States v. Rabinowitz*, supra, we cannot separate the throwing of the package from the unlawful search. The defendant's action in throwing the package was not voluntary but was forced by the actions of the officers." The same is likely true in this case, even though the Court can only infer that the contraband was actually thrown out of Mr. Perkins' window at the time police were at his home. At the same time that the Commonwealth argues that Mr. Perkins obviously threw the contraband out of the window when police knocked, and that he had no expectation of privacy in the fire escape courtyard — they likewise had no authority to enter the courtyard either (indeed it is locked to street and from the courtyard itself, only available to tenants from their units), and were only there by virtue of the assumed authority of the search warrant itself.

The right to protection against unreasonable search or seizures and compulsory self-incrimination belongs to the guilty as well as the innocent. *McDonald v. United States*, 335 U.S. 451 (1948). Here, the Court need not address whether or not Mr. Perkins had a reasonable expectation of privacy in the fire escape courtyard because that analysis assumes that the police had the authority to be in the position they were in to see the contraband, his window, or any other areas inside his apartment. They did not have any such authority to be in a position to view what they viewed and seize what they seized.

ORDER

For the foregoing reasons, the Commonwealth's motion is ALLOWED in part, and DENIED in part. It is ALLOWED as to the Commonwealth's request for an evidentiary hearing (said hearing having already taken place). The motion is DENIED as to reconsideration of the validity of the search warrant. The warrant is illegal as to the defendant's residence. And finally, the motion is DENIED as to the issue of abandonment.



Honorable Shannon Frison
Justice of the Superior Court

Dated: August 19, 2015

1484CR10703 Commonwealth v Perkins, Mark

Case Type Indictment

Case Open

Status 09/17/2015

Status

File Date 08/13/2014

Date:

Case

DCM Track: B - Complex

Judge:

Next Event: 12/14/2015

All Information

Party

Charge

Event

Tickler

Docket

Disposition

Party Information**Commonwealth - Prosecutor**

Alias

Attorney/Bar Code

Phone
Number

Nixon, Esq., Nicole Marie (688255)

Van Epps, Esq., Graham Geoffrey
(667120)[More Party Information](#)**Perkins, Mark - Defendant**

Alias

Attorney/Bar Code

Phone Number

Greenberg, Esq., James N (565631)

[More Party Information](#)**Party Charge Information****Perkins, Mark - Defendant****Charge # 1 :** 94C/32E/D-2 - Felony COCAINE, TRAFFICKING IN, 200 GRAMS OR MORE c94C §32E(b)**Original Charge** 94C/32E/D-2 COCAINE, TRAFFICKING IN, 200 GRAMS OR MORE c94C §32E(b) (Felony)**Indicted Charge****Amended****Charge****Perkins, Mark - Defendant****Charge # 2 :** 269/10/GG-0 - Felony SHOTGUN, POSSESS LOADED SAWED-OFF c269 s.10(n)**Original Charge** 269/10/GG-0 SHOTGUN, POSSESS LOADED SAWED-OFF c269 s.10(n) (Felony)**Indicted Charge**

**Amended
Charge****Perkins, Mark - Defendant****Charge # 3 :** 140/131J-1 - Misdemeanor - more than 100 days incarceration ELECTRIC
STUN GUN, SELL/POSSESS c141 §31J**Original Charge** 140/131J-1 ELECTRIC STUN GUN,
SELL/POSSESS c141 §31J (Misdemeanor -
more than 100 days incarceration)**Indicted Charge**
Amended
Charge**Events**

Date	Session	Location	Type	Event Judge	Result
08/27/2014 09:30 AM	Magistrate's Session		Arraignment		Held as Scheduled
09/30/2014 09:30 AM	Magistrate's Session		Pre-Trial Conference		Held as Scheduled
10/23/2014 09:00 AM	Criminal 1		Bail Review via Video Conference		Canceled
10/23/2014 02:00 PM	Criminal 1		Bail Review via Video Conference		Held as Scheduled
11/04/2014 09:30 AM	Magistrate's Session		Status Review		Canceled
12/01/2014 09:30 AM	Magistrate's Session		Status Review		Held as Scheduled
12/02/2014 09:30 AM	Magistrate's Session		Hearing for Appearance / Appointment of Counsel		Rescheduled
12/22/2014 09:30 AM	Magistrate's Session		Hearing for Appearance / Appointment of Counsel		Rescheduled
01/21/2015 09:30 AM	Magistrate's Session		Non-Evidentiary Hearing on Suppression		Held as Scheduled
01/27/2015 09:30 AM	Magistrate's Session		Status Review		Canceled
02/10/2015 09:00 AM	Criminal 1		Pre-Trial Hearing		Rescheduled
02/18/2015 09:00 AM	Criminal 1		Pre-Trial Hearing		Rescheduled
03/09/2015 09:00 AM	Criminal 9		Non-Evidentiary Hearing on Suppression		Held as Scheduled
03/09/2015 09:00 AM	Criminal 1		Hearing		Canceled

Date	Session	Location	Type	Event Judge	Result
04/22/2015 02:00 PM	Criminal 1		Bail Review via Video Conference		Held as Scheduled
05/06/2015 02:00 PM	Criminal 3		Final Pre-Trial Conference		Canceled
05/18/2015 09:00 AM	Criminal 3		Jury Trial		Canceled
06/25/2015 09:00 AM	Criminal 1		Status Review		Held as Scheduled
07/22/2015 09:00 AM	Criminal 1		Judge's Finding on the Record		Rescheduled
09/28/2015 09:00 AM	Criminal 1		Status Review		Held as Scheduled
12/14/2015 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status		

Ticklers

Tickler	Start Date	Days Due	Due Date	Completed Date
Pre-Trial Hearing	08/27/2014	0	08/27/2014	
Final Pre-Trial Conference	08/27/2014	256	05/10/2015	
Case Disposition	08/27/2014	270	05/24/2015	

Docket Information

Docket Date	Docket Text	File Ref Nbr.
08/13/2014	Indictment returned as to Offense #002 (Armed Career Criminal)	1
08/13/2014	MOTION by Commonwealth for arrest warrant to issue; filed & allowed (Roach, J.)	2
08/13/2014	Warrant on indictment issued	
08/13/2014	Warrant was entered onto the Warrant Management System 8/13/2014	
08/27/2014	Defendant brought into court. Warrant ordered recalled.	
08/27/2014	Warrant canceled on the Warrant Management System 8/27/2014	
08/27/2014	Appearance of Deft's Atty: James N Greenberg filed.	3
08/27/2014	Deft arraigned before Court	
08/27/2014	Deft waives reading of indictments	
08/27/2014	RE Offense 1:Plea of not guilty	

Docket Date	Docket Text	File Ref Nbr.
08/27/2014	RE Offense 2:Plea of not guilty	
08/27/2014	RE Offense 3:Plea of not guilty	
08/27/2014	Bail set: \$500,000.00 with surety or in the alternative \$50,000.00 cash without prejudice. Bail Warning Read. Mittimus Issued.	
08/27/2014	Commonwealth files Statement of the Case.	4
08/27/2014	Commonwealth files Compliance with M.R.C.P Rule 14 Discovery I.	5
08/27/2014	Commonwealth files Notice of Appearance of ADA Stephen Gilpatric.	6
08/27/2014	Assigned to Track "B" see scheduling order	
08/27/2014	Tracking deadlines Active since return date	
08/27/2014	Continued to 9/30/2014 for hearing Re: PTC by agreement.	
08/27/2014	Continued to 2/10/2015 for hearing Re: PTH by agreement.	
08/27/2014	Continued to 5/6/2015 for hearing Re: FPTC by agreement in Rm. 808 at 2pm.	
08/27/2014	Continued to 5/18/2015 for hearing Re: trial by agreement in Rm. 808. Wilson, MAG - S. Gilpatric, ADA - J. Greenberg, Atty - JAVS	
08/27/2014	Case Tracking scheduling order (Gary D. Wilson. Magistrate) mailed 8/27/2014	
09/30/2014	Defendant brought into court.	
09/30/2014	Pre-trial conference report filed	7
09/30/2014	Commonwealth files: Compliance with M.R.C.P. Rule 14 discovery II.	8
09/30/2014	Commonwealth files: Compliance with M.R.C.P. Rule 14 discovery III.	9
09/30/2014	Continued to 11/4/2014 by agreement for hearing re: filing of motions in (Ctrm.705)	
09/30/2014	Continued to 10/23/2014 by agreement for hearing re: video bail in (Ctrm.704) - JAIL LIST. (Anne Kaczmarek. Magistrate) - S. Gilpatric, ADA - J. Greenberg, Attorney - JAVS	
10/23/2014	Hearing on bail held by Video Conference on 10/23/2014	
10/23/2014	After hearing Deft's oral motion for reduction of bail is denied	
10/23/2014	11/4/14 event cancelled	
10/23/2014	Case continued until 12/1/2014 by agreement re filing of motions. Ball, J. - S. Gilpatric, ADA. - J. Greenberg, Atty. - JAVS.	
12/01/2014	Defendant came into court.	
12/01/2014	Deft files Motion for permission to summons, inspect and copy third party records with Affidavit.	10
12/01/2014	Continued to 12/2/2014 for hearing Re: Comm's Counsel by Order of the Court. Wilson, MAG - J. Greenberg, Atty - JAVS	
12/02/2014	Defendant not present, case continued until 12/22/2014 by agreement for hearing Re: Comm's counsel. Deft's presence waived. Kaczmarek, MAG - J. Greenberg, Atty - JAVS	

Docket Date	Docket Text	File Ref Nbr.
12/11/2014	Appearance of Commonwealth's Atty: Christopher Hurd filed.	11
12/22/2014	Defendant comes into court, case continued until 1/27/2015 by agreement for hearing Re: filing of motions. Deft's presence waived for this day. Kaczmarek, MAG - G. Kwon for G. VanEpps, ADA - J. Greeneberg, Atty - JAVS	
01/08/2015	Defendant not present.	
01/08/2015	Deft files Motion to advance filing date.	12
01/08/2015	Continued to 1/21/2015 for hearing Re: filing of motion to suppress by agreement. Wilson, MAG - J. Greenberg, Atty - JAVS	
01/21/2015	Defendant not present (presence waived).	
01/21/2015	Deft files Motion to Suppress Evidence with Affidavit and Memorandum of Law in support of.	13
01/21/2015	Continued to 3/9/2015 for hearing Re: Motion to Suppress by agreement. Awaiting ADA Middlesex appointment. Wilson, MAG - J. Greenberg, Atty - JAVS	
02/11/2015	Defendant not present(on snow day of 2/10/15). Case continued until 2/18/2015 by agreement re PTH. Lauriat, J. - J. Greenberg, Atty. - JAVS.	
02/18/2015	Defendant came into court	
02/18/2015	Appearance of Commonwealth's Atty: G. Epps	
02/18/2015	After hearing P#10(Deft's motion fo permission to summons, inspect and copy third party records, The Court orders summons to issue - returnable to Rm 704 on or before 3/9/15(summons to issue)	
02/18/2015	Deft files Motion to enlarge tracking order	14
02/18/2015	Case continued until 3/9/2015 by order of court re P#10. Lauriat, J. - G. Epps, ADA. - J. Greenberg, Atty. - JAVS.	
02/24/2015	Appearance of Commonwealth's Atty: Graham G. Van Epps, (Special Assistant District Attorney from Middlesex County) filed.	15
03/09/2015	Summons issued for Records (re: Paper #10), returnable by 03/19/2015.	
03/09/2015	Defendant came into court.	
03/09/2015	Commonwealth files Opposition to Defendant's Motion to Suppress Evidence Seized Pursuant to a Search Warrant.	16
03/09/2015	After hearing Motion to Suppress P#13, taken under advisement.	
03/20/2015	Commonwealth files Certificate of Compliance.	17
03/23/2015	Findings and Rulings on Defendant's Motion to Suppress Evidence, filed. Frison, J. Copies mailed to both parties 3/31/15.	18
03/23/2015	MOTION to Suppress Evidence (P#13) allowed as endorsed. (Shannon Frison, Justice).	
04/03/2015	Commonwealth files Compliance with M.R.C.P. Rule 14 Discovery VI.	19

Docket Date	Docket Text	File Ref Nbr.
04/10/2015	Commonwealth files Motion to Reconsider, Requesting Clarification and for an Evidentiary Hearing and Rulings on the Issue of Abandonment (Notice sent to Frison, J w/copy and docket sheets) 6/16/15	20
04/17/2015	Defendant not present, case continued until 4/22/2015 by agreement re video bail(2pm, jail list). Hely, J. - Middlesex - G. Van Epps, ADA. - J. Greenberg, Atty.	
04/22/2015	Defendant came into court. Hearing re track	
04/22/2015	Joint motion to continue filed	21
04/22/2015	MOTION (P#21) allowed	
04/22/2015	5--15 and 5-18-15 trial cancelled	
04/22/2015	Deft's oral motion for reduction of bail allowed	
04/22/2015	Bail set: \$100,000 with surety or \$10,000 Cash. Bail warning read. No Mittimus	
04/22/2015	Continued to 6/25/2015 by agreement for status. Ball, J. - S. Gulpatric, ADA(Middlesex). - J. Greenberg, Atty. - JAVS.	
06/25/2015	Defendant not in court.	
06/25/2015	Case continued until 7/22/2015 by agreement. Hearing re: Status re: Findings, First Session Criminal Court, CTRM 704, Leibensperger, J. - G. Van Epps, ADA. - J. Greenberg, Atty.- ERD- L. Beer, CR.	
07/22/2015	Defendant not present, case continued until 9/28/2015 by agreement re status and tracking order. Atty Greenberg notified. Roach, J. - S. Van Epps, Atty. - JAVS.	
08/19/2015	FINDINGS of FACT RULINGS on Commonwealth's Motion to Reconsider , Requesting Clarification for an Evidentiary Hearing And Rulings on Issue of Abandonment. Frison, J. Copies sent to both parties 8/25/15.	22
08/19/2015	Motion to Reconsider P#20, Allowed in part Denied in part as endorsed. Frison, J.	
09/08/2015	Commonwealth files motion for additional time for filing application for leave to appeal allowance of Defendant's motion to suppress evidence and denial of Commonwealth's motion to reconsider, requesting clarification and for an evidentiary hearing and rulings on issue of abandonment (Copy w/docket, notice to Frison, J)	24
09/08/2015	Appearance of Commonwealth's Atty: Nicole Nixon filed. Appearance is limited to pursuing the Commonwealth's appeal of the Court's order allowing the defendant's motion to suppress and denying the Commonwealth's reconsideration request.	23
09/17/2015	MOTION (P#24) allowed (McCloud, J). Copies mailed 9/16/2015	
09/17/2015	NOTICE of APPEAL FILED by Commonwealth	25
09/26/2015	**Converted and manual data; Converted from MassCourt Lite, BasCot or ForeCourt(09/26/2015). Refer to case file for assessments, disbursements, and receipt validations.**	
09/26/2015	** On 11/07/2014 \$50,000.00 was received for case SUCR2014-10703, funds received by the surety Habib M. Jallou. The defendant in the case is Mark Perkins.	

Docket Date	Docket Text	File Ref Nbr.
	As of the date of conversion a remaining balance of \$10,000.00 was converted for BAIL.	
09/28/2015	Event Result: The following event: Status Review scheduled for 09/28/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled Applies To: Van Epps, Esq., Graham Geoffrey (Attorney) on behalf of Commonwealth (Prosecutor)	
11/05/2015	Commonwealth 's Notice of Discovery VII.	26
11/19/2015	Notice of docket entry received from Appeals Court from SJC. Order: " Court is ordered that the interlocutory appeal shall proceed in the Appeals Court..."	27

Case Disposition		
Disposition	Date	Case Judge
Active	09/17/2015	